

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALDOE LEE FOSTER	§	
v.	§	CIVIL ACTION NO. 6:06cv44
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Aldoe Foster, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Foster was convicted of aggravated robbery on July 18, 2003, receiving a sentence of 40 years in prison. He did not take a direct appeal, but filed two state habeas corpus petitions, which have been denied. He says that he is actually innocent of the offense, his plea of guilty was unknowing and involuntary, he received ineffective assistance of counsel, and he could not understand the other documents which he was signing.

After review of the pleadings in the case as well as public court records, the Magistrate Judge issued a Report recommending that the petition be dismissed with prejudice because the statute of limitations had expired. Foster received a copy of this Report, but filed no objections thereto; instead, he filed a motion, which he styled as a “motion to abate,” asking that his petition be dismissed without prejudice because he had not exhausted his state remedies. Even if Foster should file another state habeas petition, however, this would not serve to extend the limitations period. See Villegas v. Johnson, 184 F.3d 467, 472 (5th Cir. 1999) (expired statute of

limitations cannot be revived by filing a state habeas petition). No purpose would be served in dismissing Foster's petition without prejudice when it is already barred by limitations.

Because Foster did not file objections to the Report of the Magistrate Judge, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action, including Foster's "motion to abate," are hereby DENIED.

SIGNED this 12nd day of May, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE